

EXHIBIT T

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

EMG TECHNOLOGY, LLC,

Plaintiff,

vs.

APPLE, INC., AMERICAN AIRLINES,
INC., DELL, INC., HYATT
CORPORATION, MARRIOTT
INTERNATIONAL, INC. & BARNES &
NOBLE, INC.,

Defendants.

*** CONFIDENTIAL - ATTORNEYS' EYES ONLY ***

(PAGES 307 TO 311)

*** CONFIDENTIAL***

(PAGES 312 TO 345)

DEPOSITION OF:

ELLIOT GOTTFURCHT
TUESDAY, DECEMBER 15, 2009
10:07 A.M.

Reported by: SUSAN LYNN POBOR
CSR No. 5132

<p style="text-align: right;">Page 18</p> <p>1 ideas within a few minutes.</p> <p>2 Do you remember how many minutes?</p> <p>3 A. No.</p> <p>4 Q. Was it more than five?</p> <p>5 A. I don't know.</p> <p>6 Q. Could it have been?</p> <p>7 A. Could -- could have -- could have been.</p> <p>8 I don't recall.</p> <p>9 Q. Less than an hour?</p> <p>10 A. Probably so, but I still -- I don't</p> <p>11 recall.</p> <p>12 Q. Less than a half an hour?</p> <p>13 A. I don't recall.</p> <p>14 Q. I'm just asking for your best</p> <p>15 recollection.</p> <p>16 A. Okay. I -- I -- I --</p> <p>17 Q. Okay.</p> <p>18 A. It was ten years ago.</p> <p>19 Q. Okay. All right. So within a few</p> <p>20 minutes, you and Grant came up with the ideas we've</p> <p>21 talked about.</p> <p>22 And all -- all of them were your ideas</p> <p>23 except for the manipulating the region of the screen</p> <p>24 for scrolling and zooming.</p> <p>25 Is that right?</p>	<p style="text-align: right;">Page 20</p> <p>1 THE WITNESS: I -- I don't think so.</p> <p>2 BY MR. STEPHENS:</p> <p>3 Q. Do you recall what you wrote it on?</p> <p>4 A. No.</p> <p>5 Q. Do you recall what you did with the</p> <p>6 thing you wrote it on?</p> <p>7 A. No.</p> <p>8 Q. Have you ever built your invention?</p> <p>9 MR. BECKER: Object to form.</p> <p>10 THE WITNESS: Personally?</p> <p>11 BY MR. STEPHENS:</p> <p>12 Q. Well, either personally or asked someone</p> <p>13 to do it who worked at your direction or control, yes.</p> <p>14 A. Could you define "built" for me?</p> <p>15 Q. Made a system that practiced your</p> <p>16 invention.</p> <p>17 MR. BECKER: Object. Form.</p> <p>18 THE WITNESS: I'm not sure I'm qualified to</p> <p>19 answer that question.</p> <p>20 BY MR. STEPHENS:</p> <p>21 Q. So you don't know whether you've ever</p> <p>22 built your invention?</p> <p>23 A. Well, we have developed some of the</p> <p>24 invention, I believe, but I -- I'm not qualified to</p> <p>25 respond to your question. I'm not --</p>
<p style="text-align: right;">Page 19</p> <p>1 A. That's my recollection, but it may have</p> <p>2 been more than a few minutes. So I -- I think we</p> <p>3 clarified that.</p> <p>4 Q. Okay. But definitely less than an hour.</p> <p>5 Right?</p> <p>6 A. I do not recall.</p> <p>7 Q. Okay. Probably less than an hour, I</p> <p>8 think you said.</p> <p>9 A. I don't recall, but it was -- it was</p> <p>10 that day.</p> <p>11 Q. Okay.</p> <p>12 A. It --</p> <p>13 Q. It was a short time.</p> <p>14 Right?</p> <p>15 A. Well, it's relative.</p> <p>16 Q. Was there anybody else there?</p> <p>17 A. No.</p> <p>18 Q. Now, you mentioned that you wrote down</p> <p>19 these things.</p> <p>20 Did you keep that writing?</p> <p>21 A. I don't recall.</p> <p>22 Q. Have -- have you seen it any time in</p> <p>23 connection with this case?</p> <p>24 A. I don't --</p> <p>25 MR. BECKER: Object to form.</p>	<p style="text-align: right;">Page 21</p> <p>1 Q. So --</p> <p>2 A. I -- I don't have the expertise to -- to</p> <p>3 answer your question.</p> <p>4 Q. So you, as the inventor, don't know</p> <p>5 whether you've ever made your invention.</p> <p>6 Is that right?</p> <p>7 A. I don't -- no, I said I don't have the</p> <p>8 expertise to res -- answer your question.</p> <p>9 Q. Do you know the answer or not?</p> <p>10 A. I don't have the expertise to answer it.</p> <p>11 Q. So you don't know.</p> <p>12 Right?</p> <p>13 A. I don't have the expertise to answer it.</p> <p>14 Q. What do you mean when you say you don't</p> <p>15 have the expertise to answer it?</p> <p>16 A. I'm not an engineer.</p> <p>17 Q. Okay. And --</p> <p>18 A. I've had --</p> <p>19 Q. Go ahead.</p> <p>20 A. I'm not an engineer, and I've had no</p> <p>21 educational experience to answer the question.</p> <p>22 Q. Okay. Well, what additional experience</p> <p>23 do you think you'd need to have in order to tell</p> <p>24 whether you built the invention?</p> <p>25 A. That's the whole idea. I would not know</p>

<p style="text-align: right;">Page 22</p> <p>1 because I'm not qualified.</p> <p>2 Q. Well, that's what I'm trying to</p> <p>3 understand, is what is it that -- what aspect of your</p> <p>4 invention is it that you don't understand whether</p> <p>5 you've made it or not?</p> <p>6 MR. BECKER: Object. Form.</p> <p>7 THE WITNESS: I, again, say, I was -- not</p> <p>8 qualified to answer your question.</p> <p>9 BY MR. STEPHENS:</p> <p>10 Q. So you can't even tell me what parts of</p> <p>11 it you are unsure whether you've built or not.</p> <p>12 Is that right?</p> <p>13 A. I cannot recall at this time what -- I'm</p> <p>14 unable to answer your question --</p> <p>15 Q. Okay.</p> <p>16 A. -- at this time.</p> <p>17 Q. Have you tried to build your invention?</p> <p>18 A. Again, it would fall into the category</p> <p>19 of that I lack the expertise to know what I have done</p> <p>20 and what I have not done, so I'm unable to answer your</p> <p>21 question.</p> <p>22 Q. Well, what have you done?</p> <p>23 A. Well, over the years, we -- I -- with --</p> <p>24 with help, developed a prototype that would illustrate</p> <p>25 some of the elements of the invention.</p>	<p style="text-align: right;">Page 24</p> <p>1 Q. At what point did you first have a</p> <p>2 prototype that would illustrate some of the elements</p> <p>3 of the invention?</p> <p>4 A. I think probably -- I'm just -- just</p> <p>5 guessing now -- in 2001.</p> <p>6 Q. And who built that prototype?</p> <p>7 A. I do not recall who that person was. It</p> <p>8 was someone that I had hired. I don't recall his name</p> <p>9 at this time.</p> <p>10 But MailTV had several different</p> <p>11 editions over the years. I think that may have</p> <p>12 been -- I mean, it may have started with -- in July of</p> <p>13 1999 when we first envisioned how the Internet would</p> <p>14 be displayed and navigated on mobile devices and</p> <p>15 television. And then it -- throughout the years, I</p> <p>16 tried to improve upon that.</p> <p>17 Q. But it was around 2001 when you first</p> <p>18 had something you would call a prototype of how it</p> <p>19 worked.</p> <p>20 Is that right?</p> <p>21 A. It -- it may have been in 2000.</p> <p>22 Q. Is there anything you can tie it to,</p> <p>23 like the presidential election in 2000?</p> <p>24 Did it happen before that or after it?</p> <p>25 A. I don't recall.</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. And you're not qualified to say whether</p> <p>2 or not that prototype actually is the invention or</p> <p>3 not.</p> <p>4 Is that right?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. Who has been involved in that</p> <p>7 effort to build a prototype?</p> <p>8 A. Rick Soss, S-o-s-s. His company is</p> <p>9 called Protovu.</p> <p>10 Q. Okay. Anyone else?</p> <p>11 A. That's all I can think of at the time.</p> <p>12 Q. Is Mr. Soss an engineer?</p> <p>13 A. I do not know.</p> <p>14 Q. What is his area of expertise?</p> <p>15 A. I don't have his qualifications, so --</p> <p>16 that I can recall at this time.</p> <p>17 Q. Is he a computer programmer?</p> <p>18 A. I -- I just don't have his</p> <p>19 qualifications.</p> <p>20 Q. What -- what has he done -- what has</p> <p>21 been his involvement in the project?</p> <p>22 A. He developed MailTV, the -- the demo of</p> <p>23 MailTV, the website, the PC website of MailTV, and</p> <p>24 other illustrations or graphics that I used to show</p> <p>25 third parties.</p>	<p style="text-align: right;">Page 25</p> <p>1 Q. Anything else in time that might help</p> <p>2 you place when that prototype was completed or built?</p> <p>3 A. I don't recall.</p> <p>4 Q. What was it called?</p> <p>5 A. Prior to MailTV, I think I called it</p> <p>6 Fogie & Jack.</p> <p>7 If you had the production of documents,</p> <p>8 it -- that would be very helpful.</p> <p>9 Q. When did it change from Fogie & Jack to</p> <p>10 MailTV?</p> <p>11 A. I could only guess.</p> <p>12 Q. Go ahead and give me your best guess.</p> <p>13 MR. BECKER: Object. Form.</p> <p>14 THE WITNESS: 2001.</p> <p>15 BY MR. STEPHENS:</p> <p>16 Q. Okay. Now, you mentioned that you are</p> <p>17 not an engineer and you're not qualified to say</p> <p>18 whether the prototype that you have today practices</p> <p>19 all the elements of your invention.</p> <p>20 Right?</p> <p>21 A. Correct.</p> <p>22 Q. Were you capable of implementing your</p> <p>23 invention, yourself?</p> <p>24 MR. BECKER: Object. Form.</p> <p>25 THE WITNESS: Implementing it into --</p>

<p style="text-align: right;">Page 126</p> <p>1 A. What would I -- my process be?</p> <p>2 Q. Yes.</p> <p>3 A. Well, first process would be -- is to</p> <p>4 call Tom Coester --</p> <p>5 Q. Okay.</p> <p>6 A. -- and review it with him, to explain</p> <p>7 what this means.</p> <p>8 Q. So you'd ask Mr. Coester to explain what</p> <p>9 the patent means?</p> <p>10 A. No, no -- well, yes. Again, I haven't</p> <p>11 looked at this for ten years.</p> <p>12 Q. Okay. And then what?</p> <p>13 A. I would review it with him to refresh my</p> <p>14 recollection, and then I would be better equipped to</p> <p>15 answer your question.</p> <p>16 Q. Okay.</p> <p>17 A. I'm sorry. We had this review with --</p> <p>18 Q. So --</p> <p>19 A. -- Tom.</p> <p>20 Q. -- is it possible you did try to develop</p> <p>21 a custom browser and you just don't remember?</p> <p>22 A. I -- I don't understand what this</p> <p>23 language means, so I -- I'm unable to answer your</p> <p>24 question.</p> <p>25 Q. Okay. You understood it when you filed</p>	<p style="text-align: right;">Page 128</p> <p>1 that would give me information explained here.</p> <p>2 Q. Okay.</p> <p>3 A. I'm not an engineer.</p> <p>4 Q. Can you show me where in this patent it</p> <p>5 talks about scrolling or zooming with a finger?</p> <p>6 A. I believe the language is, "manipulating</p> <p>7 region of the screen."</p> <p>8 Q. Okay.</p> <p>9 A. And I'd have to read the whole patent to</p> <p>10 remember where that is.</p> <p>11 But I re -- my recollection is that the</p> <p>12 patent talked about manipulating a region of the</p> <p>13 screen for zooming and scrolling.</p> <p>14 Q. Okay. Other than the word "manipulate,"</p> <p>15 are you aware of any disclosure in this patent that</p> <p>16 describes using a finger to scroll or zoom?</p> <p>17 A. Understanding that my definition of</p> <p>18 "manipulation" includes a finger.</p> <p>19 Q. I --</p> <p>20 A. Are you saying other than using the word</p> <p>21 "manipulation"?</p> <p>22 Q. Yes.</p> <p>23 Other than that one word, are you aware</p> <p>24 of anything in the patent that discloses using a</p> <p>25 finger to scroll --</p>
<p style="text-align: right;">Page 127</p> <p>1 the patent application?</p> <p>2 A. Yeah, I -- I read the document several</p> <p>3 times and had -- in meetings with Tom Coester, and I</p> <p>4 had a lot of questions and he explained them to me.</p> <p>5 Q. Okay. But you don't understand it</p> <p>6 today?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay.</p> <p>9 A. Can't recall ten years later.</p> <p>10 Q. In that same place in Column 2, just a</p> <p>11 little bit further on, it says, "Content partners,</p> <p>12 such as content partner node 14 provide content in a</p> <p>13 special -- specified format that facilitates its use</p> <p>14 by the client nodes."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. What format was that?</p> <p>18 A. Again, I'm not an expert, and I would</p> <p>19 have to rely on a review with Tom Coester.</p> <p>20 Q. Okay. So you just don't know?</p> <p>21 A. I just -- I don't remember. I'm not an</p> <p>22 expert.</p> <p>23 Q. When you say you're not an expert, what</p> <p>24 are you not an expert in?</p> <p>25 A. I'm not a expert in the -- in the field</p>	<p style="text-align: right;">Page 129</p> <p>1 A. I would have to take some time and read</p> <p>2 this.</p> <p>3 Q. Go ahead.</p> <p>4 A. It could take an hour.</p> <p>5 You want me to do it?</p> <p>6 Okay.</p> <p>7 Can I mark on this exhibit?</p> <p>8 Q. Sure.</p> <p>9 A. Okay. All right.</p> <p>10 Q. If it helps, Column 5, it's talking</p> <p>11 about Figure 5-B being a flow diagram of client side</p> <p>12 manipulation of a segmented page.</p> <p>13 A. So you're referring me to Column 5?</p> <p>14 Q. I am --</p> <p>15 A. Okay.</p> <p>16 Q. -- Line 5.</p> <p>17 A. Line 5.</p> <p>18 You said I couldn't -- I could mark on</p> <p>19 this?</p> <p>20 Q. You can, yes.</p> <p>21 A. Okay. You're asking me to find the word</p> <p>22 "manipulation"?</p> <p>23 Q. No, I'm asking you to point to me where</p> <p>24 it discloses using a finger to scroll or zoom.</p> <p>25 A. The word "finger", you're asking me if</p>

<p style="text-align: right;">Page 170</p> <p>1 Q. "Primary navigation options as used 2 herein are those navigation options that necessarily 3 change between successive matrix layers changing from 4 general to more specific with increases in depth in 5 the matrix." 6 Is that what you're referring to? 7 A. Yes. 8 Q. What does that mean, an option that 9 necessarily changes between successive matrix layers? 10 MR. BECKER: Same objections. 11 THE WITNESS: And that would be 12 attorney-client privilege. 13 BY MR. STEPHENS: 14 Q. So you can't tell me anything about your 15 understanding of that phrase without revealing 16 attorney-client privileged information. 17 Is that right? 18 A. I do not believe so. I -- I -- I 19 believe that that's something which I had reviewed 20 early on with Tom Coester. 21 Q. That same quote that I read refers to 22 increases in depth in the matrix. 23 What does -- what does the depth of the 24 matrix mean? 25 A. Well, I'll go to, from July 1st to</p>	<p style="text-align: right;">Page 172</p> <p>1 A. I don't recall that. 2 Q. You don't remember that? 3 Okay. We'll get to that. 4 Now, earlier, you mentioned Online Labs 5 and that that was where Albert-Michel Long was 6 employed. 7 Is that right? 8 A. I don't know what his relationship with 9 Online was, whether it was an employee or consultant. 10 Q. What was Online Labs' role in connection 11 with your invention? 12 A. They were referred to me by legal 13 counsel. 14 Q. Mr. Coester? 15 A. No, by Jill Pitirini at -- at Manatt. 16 Q. How do you spell that name? 17 A. G -- G -- J-i-l-l. 18 Q. J-i-l-l? 19 A. Yeah. 20 Q. What's the last name? 21 A. P-i-t-r-i-n-i, I believe. 22 Q. Jill Pitirini? 23 A. Yes. 24 Q. Okay. And how did that happen? 25 How did Jill Pitirini happen to refer</p>
<p style="text-align: right;">Page 171</p> <p>1 July 7, what I would think about at that time. 2 Q. Okay. 3 A. And at that time, one of the embodiments 4 would be that there would be a drill-down from general 5 to more specific. 6 Q. Kind of like Yahoo had at the time? 7 A. Pardon me? 8 Q. Like Yahoo had at the time -- 9 MR. BECKER: Object to form. 10 BY MR. STEPHENS: 11 Q. -- where you have categories and you can 12 get more specific? 13 A. Right. 14 Q. Okay. 15 A. It would be like that. 16 Q. And depth refers to how many links in a 17 hierarchy of categories, something like that? 18 A. At that particular moment in time, I 19 would think that -- probably thought that that was an 20 embodiment that I had thought about during the period 21 of July 1st to July 7, 1999. 22 Q. Okay. And that -- that's what you meant 23 when you said, in some of your documents in that 24 period, that you were working on a filtered Yahoo. 25 Is that right?</p>	<p style="text-align: right;">Page 173</p> <p>1 Online Labs to you? 2 A. I decided sometime, I think in July, 3 that I would need to engage experts, for them to 4 prepare their component, another component of the 5 invention, other than what Grant and I had supplied to 6 Tom Coester. 7 So I wanted to engage consultants, 8 experts that could work on preparing a document for 9 Tom Coester pertaining to some of the components of 10 the invention. 11 Q. What components are you referring to? 12 A. It was ten years ago, and I was guessing 13 that it was -- would have to do with some of the 14 technology, the HTML, XML technology. 15 Q. Did you have any understanding of HTML 16 prior to your interaction with Online Labs? 17 A. I did not have any knowledge of it prior 18 to meeting Tom Coester. So my knowledge of it would 19 have been from Tom Coester. My understanding would 20 have been from Tom Coester prior to hiring 21 Online Labs. 22 And I don't recall what that -- what -- 23 that knowledge I would have had or understanding I 24 would have had during that period of time in 1999. 25 Q. What was Manatt's role in your</p>

<p style="text-align: right;">Page 174</p> <p>1 invention?</p> <p>2 MR. BECKER: I'll instruct you, to the extent</p> <p>3 it requires you to divulge any privileged</p> <p>4 conversations or advice, I instruct you not to answer.</p> <p>5 THE WITNESS: I don't believe they were</p> <p>6 involved in the invention at all other than a</p> <p>7 referral.</p> <p>8 BY MR. STEPHENS:</p> <p>9 Q. And how did you happen to get the</p> <p>10 referral from Manatt?</p> <p>11 MR. BECKER: Same instruction.</p> <p>12 THE WITNESS: Can I answer that?</p> <p>13 MR. BECKER: As long as you don't divulge the</p> <p>14 contents of our privileged conversation.</p> <p>15 THE WITNESS: Jill recommended Tom Coester and</p> <p>16 recommended Online Labs, and I had been a client of</p> <p>17 Manatt for many years.</p> <p>18 BY MR. STEPHENS:</p> <p>19 Q. In patent matters or other things?</p> <p>20 A. No, real estate matters.</p> <p>21 Q. So what happened next after you were</p> <p>22 introduced to Online Labs?</p> <p>23 A. I asked them to assemble a group of</p> <p>24 experts that I could work with, that Tom Coester could</p> <p>25 work with, to prepare a component which -- of the</p>	<p style="text-align: right;">Page 176</p> <p>1 Q. And why did you change?</p> <p>2 A. That's attorney-client privilege.</p> <p>3 Q. So you -- you changed on advice of</p> <p>4 counsel?</p> <p>5 A. No, I'm saying that it was</p> <p>6 attorney-client privilege.</p> <p>7 Q. Well, your decision to change counsel is</p> <p>8 not attorney-client privileged unless you did it</p> <p>9 because an attorney advised you to do it.</p> <p>10 A. It --</p> <p>11 Q. If you made up -- if you made up your</p> <p>12 own mind to do, it's not privileged.</p> <p>13 A. Okay. I -- it was in conversation with</p> <p>14 Tom Coester.</p> <p>15 Q. And you can't tell me what the reason</p> <p>16 was without revealing --</p> <p>17 A. Well, I -- I may be able to, if I can go</p> <p>18 off record and speak to --</p> <p>19 Q. Sure.</p> <p>20 A. Because I don't mind telling you. It's</p> <p>21 just, I want to make sure I do it right.</p> <p>22 Q. Okay.</p> <p>23 MR. BECKER: Is this a good time for a break,</p> <p>24 anyways?</p> <p>25 MR. STEPHENS: Sure.</p>
<p style="text-align: right;">Page 175</p> <p>1 invention, write a report, and to give that</p> <p>2 information to Tom Coester, who would write the patent</p> <p>3 document.</p> <p>4 Q. And when did you ask him to do that?</p> <p>5 A. I'm guessing it was in July or early</p> <p>6 August of 1999.</p> <p>7 Q. Okay. Who wrote the application that</p> <p>8 led to the 845 patent?</p> <p>9 A. The application?</p> <p>10 Q. Yeah.</p> <p>11 A. Tom Coester would have written the -- he</p> <p>12 would have prepared the patent document.</p> <p>13 Q. Now, was Tom Coester at</p> <p>14 Morrison & Foerster at the time?</p> <p>15 A. No, Blakely Sokoloff.</p> <p>16 Q. Did you change law firms during the</p> <p>17 course of prosecution of the 845 patent?</p> <p>18 A. I think the prosecution was over with.</p> <p>19 I believe it was over with. And I -- I believe that</p> <p>20 the board had written its report, its brief, reversing</p> <p>21 the examiner's decision.</p> <p>22 It was on that process, several-month</p> <p>23 process where it goes back to the examiner.</p> <p>24 Q. And that's when you changed law firms?</p> <p>25 A. I believe so.</p>	<p style="text-align: right;">Page 177</p> <p>1 THE VIDEOGRAPHER: This marks the end of tape</p> <p>2 Number 2 in the deposition of Elliot Gottfurcht.</p> <p>3 Going off the record.</p> <p>4 The time is 3:02 p.m.</p> <p>5 (Whereupon a recess was taken)</p> <p>6 THE VIDEOGRAPHER: Back on the record.</p> <p>7 Here marks the beginning of tape</p> <p>8 Number 3 in the deposition of Elliot Gottfurcht.</p> <p>9 The time is 3:32 p.m.</p> <p>10 BY MR. STEPHENS:</p> <p>11 Q. Mr. Gottfurcht, before the break, we</p> <p>12 were talking about Online Labs, and you mentioned that</p> <p>13 you had asked them to assemble some experts to put</p> <p>14 together a report that would then work -- Mr. Coester</p> <p>15 would then use, in part, to draft the patent document.</p> <p>16 Right?</p> <p>17 A. Yes.</p> <p>18 Q. And Online Labs did that.</p> <p>19 Right?</p> <p>20 A. Yes, they did.</p> <p>21 Q. And that report was dated sometime in</p> <p>22 October.</p> <p>23 Does that sound right?</p> <p>24 A. That sounds about right.</p> <p>25 Q. Did they have an ongoing involvement</p>

<p style="text-align: right;">Page 178</p> <p>1 after that?</p> <p>2 A. No, after they -- the co-inventors</p> <p>3 signed off on the patent application, that terminated</p> <p>4 their engagement, and I continued to engage</p> <p>5 Albert Long.</p> <p>6 Q. So Online --</p> <p>7 Well, I guess -- let me -- let me back</p> <p>8 up.</p> <p>9 Did Online Labs ever try to actually</p> <p>10 implement anything for you?</p> <p>11 A. No.</p> <p>12 Q. Did Mr. Long separate from whatever</p> <p>13 relationship he had with Online Labs at that point?</p> <p>14 A. Yes, I believe so.</p> <p>15 Q. And he worked directly for you at that</p> <p>16 point?</p> <p>17 A. Yes.</p> <p>18 Q. And how long did he continue to work for</p> <p>19 you?</p> <p>20 A. This would have been from approximately</p> <p>21 November 1999, approximately May of 2000.</p> <p>22 Q. So Mr. Long worked directly for you from</p> <p>23 November '99 to about May of 2000?</p> <p>24 A. Correct.</p> <p>25 Q. About six months?</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. More than three?</p> <p>2 A. Yes.</p> <p>3 Q. More than five?</p> <p>4 A. Yes.</p> <p>5 Q. More than ten?</p> <p>6 A. I don't recall.</p> <p>7 Q. How many patents have issued in that</p> <p>8 family?</p> <p>9 A. Four.</p> <p>10 Q. So at least some have gone abandoned.</p> <p>11 Right?</p> <p>12 A. Yes.</p> <p>13 Q. Have you instructed your lawyers to turn</p> <p>14 those documents over, the -- the patent filings and</p> <p>15 the -- the file histories for those abandoned</p> <p>16 applications in this litigation?</p> <p>17 A. I don't believe so.</p> <p>18 Q. Okay.</p> <p>19 MR. STEPHENS: We need those, Rob. We should</p> <p>20 have had those before this deposition.</p> <p>21 THE WITNESS: Are -- are you -- let me just</p> <p>22 clarify something.</p> <p>23 Are you talking about new -- new</p> <p>24 specifications or off the same original</p> <p>25 specifications?</p>
<p style="text-align: right;">Page 179</p> <p>1 A. That would be correct.</p> <p>2 Q. And what did Mr. Long do for you in that</p> <p>3 period?</p> <p>4 A. He worked on the -- the 845 patent and</p> <p>5 another patent that we had filed where Mr. Long was a</p> <p>6 co-inventor.</p> <p>7 Q. What was that other patent?</p> <p>8 A. I think it was "Make My Tune" patent.</p> <p>9 Q. What was that about?</p> <p>10 A. That was about converting a photograph</p> <p>11 on the fly into a cartoon.</p> <p>12 Q. Did you get a patent on that?</p> <p>13 A. No.</p> <p>14 Q. How many other patents do you have</p> <p>15 that -- or sorry, let me ask it differently.</p> <p>16 How many patent applications have you</p> <p>17 filed that claim priority to the parent of the patents</p> <p>18 in this lawsuit, in other words, the 497 that was</p> <p>19 filed in November 1999?</p> <p>20 A. Can you rephrase the question?</p> <p>21 Q. Yeah.</p> <p>22 How many applications have you filed</p> <p>23 that are based in any way on the 497 patent that was</p> <p>24 originally filed in November of 1999?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 181</p> <p>1 BY MR. STEPHENS:</p> <p>2 Q. I'm talking about anything that claims</p> <p>3 any benefit of any kind from the original filing of</p> <p>4 the 497, whether it's a continuation in part or merely</p> <p>5 a related application that says, This is a related</p> <p>6 application.</p> <p>7 A. Or a continuation?</p> <p>8 Q. Or a continuation.</p> <p>9 A. So you're talking about any continuation</p> <p>10 of the 845?</p> <p>11 Q. For the 497.</p> <p>12 A. For the 497?</p> <p>13 Q. Yes.</p> <p>14 A. Okay.</p> <p>15 Q. So between five and ten is your best of</p> <p>16 how many applications --</p> <p>17 A. I -- I -- I can't recall how many. I</p> <p>18 think there may have been more than ten.</p> <p>19 Q. I've seen a document, and we'll probably</p> <p>20 look at it here in a minute, that said you had 30</p> <p>21 patent applications pending.</p> <p>22 Does that ring a bell?</p> <p>23 A. I don't call -- recall how many, but</p> <p>24 there were a number of applications that were pending.</p> <p>25 Q. Could there have been 30 applications?</p>

<p style="text-align: right;">Page 190</p> <p>1 Q. Has he been continuing to develop the</p> <p>2 MallTV.com website during the course of this</p> <p>3 litigation?</p> <p>4 A. No, we have -- we've put it on hold.</p> <p>5 Q. When did you put it on hold?</p> <p>6 A. I would say about the time that the</p> <p>7 litigation commenced.</p> <p>8 Q. What did you tell Mr. Soss about that?</p> <p>9 A. I don't recall if I told him anything.</p> <p>10 Q. How did it get put on hold?</p> <p>11 A. I just didn't call him to do additional</p> <p>12 work.</p> <p>13 Q. I see.</p> <p>14 And he didn't have any projects</p> <p>15 outstanding?</p> <p>16 A. He didn't -- pardon me?</p> <p>17 Q. He did not have any projects outstanding</p> <p>18 at the time the litigation commenced?</p> <p>19 A. Any projects?</p> <p>20 Q. Changes to the MallTV.com site?</p> <p>21 A. I -- I think that we didn't change the</p> <p>22 MallTV.com site except that -- at the bottom of it</p> <p>23 where it says "copyright," we added 2009, at the</p> <p>24 bottom of the web page.</p> <p>25 I don't know if he did it for the mobile</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. Anyone else besides Mr. Soss and</p> <p>2 Mr. Bajaris that was -- has been involved in creating</p> <p>3 prototypes for you?</p> <p>4 A. I think that was -- that was -- it was</p> <p>5 just those two.</p> <p>6 Q. Who is Angel Gulermovich?</p> <p>7 A. She works for Art & Logic. She was a</p> <p>8 consultant for Art & Logic.</p> <p>9 Q. And who is Daisy Trayham?</p> <p>10 A. She is also a consultant for</p> <p>11 Art & Logic.</p> <p>12 Q. Are there any other people that have</p> <p>13 been involved in creating prototypes for you?</p> <p>14 A. I think that Angel's -- was not involved</p> <p>15 in prototypes. I think that Daisy was involved in the</p> <p>16 mobile site, working under the direction of -- of Bob.</p> <p>17 Q. What was Angel's role?</p> <p>18 A. She was a -- a consultant for</p> <p>19 Art & Logic.</p> <p>20 Q. But what was her role in connection with</p> <p>21 any project for you?</p> <p>22 A. I think she was just someone that Bob</p> <p>23 had said had some knowledge, may have wanted to talk</p> <p>24 to her.</p> <p>25 Q. And did you talk to her?</p>
<p style="text-align: right;">Page 191</p> <p>1 site. He may have made that change for the mobile</p> <p>2 site.</p> <p>3 Q. When did the iPhone version of MallTV go</p> <p>4 online?</p> <p>5 MR. BECKER: Object. Form.</p> <p>6 THE WITNESS: I don't recall.</p> <p>7 BY MR. STEPHENS:</p> <p>8 Q. Was it 2008?</p> <p>9 A. It's possible 2008.</p> <p>10 Q. 2007?</p> <p>11 A. It's possible.</p> <p>12 Q. 2009?</p> <p>13 A. No, I think it was 2007, 2008.</p> <p>14 Q. Okay. Who else has been involved in</p> <p>15 constructing prototypes of your invention for you?</p> <p>16 A. Bob Bajor -- Bajaris at Art & Logic.</p> <p>17 Q. How do you spell his last name?</p> <p>18 A. I -- I don't recall.</p> <p>19 Q. Okay. B-a-j-a-r-i-s or something like</p> <p>20 that?</p> <p>21 A. Something like that.</p> <p>22 Q. Now, did you say that Mr. Soss is at</p> <p>23 Protovu?</p> <p>24 Was that the name?</p> <p>25 A. Protovu is his company.</p>	<p style="text-align: right;">Page 193</p> <p>1 A. I did.</p> <p>2 Q. And what was the nature of that</p> <p>3 conversation?</p> <p>4 A. I discussed certain components of the --</p> <p>5 that were on my mind.</p> <p>6 Q. What components?</p> <p>7 A. I don't recall. I think one had to do</p> <p>8 with transcoding.</p> <p>9 Q. Anything else?</p> <p>10 A. I don't recall. There may have been</p> <p>11 something else.</p> <p>12 Q. And how did you come to talk to Angel</p> <p>13 about transcoding?</p> <p>14 A. Bob had recommended that if I wanted to</p> <p>15 have discussions, that she was a knowledgeable person</p> <p>16 and she's located in Los Angeles, and that I could</p> <p>17 have some conversation with her.</p> <p>18 Q. About transcoding specifically?</p> <p>19 A. No, just about whatever, generally, that</p> <p>20 I -- you know, would come to my mind.</p> <p>21 Q. What's -- what kind of work has</p> <p>22 Art & Logic, generally speaking, done for you?</p> <p>23 A. They've done -- the bulk of the work was</p> <p>24 that they had prepared the -- the mobile website,</p> <p>25 MallTV mobile website.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. That includes the iPhone portion?</p> <p>2 A. Yes.</p> <p>3 Q. And there are other portions, as well?</p> <p>4 A. I think so. I think it could be</p> <p>5 accessed from a BlackBerry.</p> <p>6 Q. So Mr. Soss did the Flash prototype, and</p> <p>7 Art & Logic did the mobile por -- version.</p> <p>8 Is that right?</p> <p>9 A. Art -- they may have worked together on</p> <p>10 some of the layout, put them in touch with each other.</p> <p>11 Q. Now, Flash is not XML.</p> <p>12 Right?</p> <p>13 A. I -- I don't believe so.</p> <p>14 Q. How many discussions did you have with</p> <p>15 Angel?</p> <p>16 A. A guess, a half a dozen.</p> <p>17 Q. And when did those -- what period did</p> <p>18 those take place?</p> <p>19 A. I think they took place in 19 -- 2008.</p> <p>20 Q. All of them in 2008?</p> <p>21 A. I believe so.</p> <p>22 Q. You talked to her about transcoding.</p> <p>23 Do you remember any -- anything else</p> <p>24 that you talked to her about?</p> <p>25 A. I do not recall. I may have talked to</p>	<p style="text-align: right;">Page 196</p> <p>1 A. That's correct.</p> <p>2 Q. Or any other lawsuit.</p> <p>3 Is that right?</p> <p>4 A. Any other lawsuit?</p> <p>5 Q. Yeah.</p> <p>6 A. Any other lawsuit --</p> <p>7 Q. Involving you, I should say.</p> <p>8 A. No.</p> <p>9 Q. Okay.</p> <p>10 MR. STEPHENS: Rob, I was asking you about</p> <p>11 preserving Mr. Soss' e-mails, and you -- you said you</p> <p>12 don't have any obligation to do that.</p> <p>13 Do I understand that right?</p> <p>14 MR. BECKER: I just --</p> <p>15 The question is to me?</p> <p>16 MR. STEPHENS: Yeah.</p> <p>17 MR. BECKER: That's what I think I said.</p> <p>18 MR. STEPHENS: Well, do you have an ob -- do</p> <p>19 you believe that --</p> <p>20 MR. BECKER: I have --</p> <p>21 MR. STEPHENS: -- you or Mr. Gottfurcht have</p> <p>22 an obligation to preserve?</p> <p>23 MR. BECKER: I -- I don't know. I -- I</p> <p>24 wouldn't -- I haven't been handling that, so I would</p> <p>25 have to consult with the others.</p>
<p style="text-align: right;">Page 195</p> <p>1 her about some other things. I just don't recall.</p> <p>2 Q. So what do you remember about your</p> <p>3 discussions with her?</p> <p>4 A. I wanted to ask her just -- I'm very</p> <p>5 curious about -- about mobile websites and -- and</p> <p>6 things like that, and I -- if I had a question during</p> <p>7 that period of time, I'd call her up and I would ask</p> <p>8 her.</p> <p>9 Q. Did Angel do any work for your lawyers?</p> <p>10 A. No, I don't believe so.</p> <p>11 Q. Did she do any work directly or</p> <p>12 indirectly under their direction or control?</p> <p>13 A. No, not -- not that I can recall. I</p> <p>14 don't believe so.</p> <p>15 Q. Did Mr. Bajaris do any work for your</p> <p>16 lawyers?</p> <p>17 A. No, I don't believe so.</p> <p>18 Q. Did anyone at Art & Logic do any work</p> <p>19 for your lawyers?</p> <p>20 A. I do not believe so.</p> <p>21 Q. Is that also true for the people at</p> <p>22 Protovu?</p> <p>23 A. Yes.</p> <p>24 Q. So they really had no involvement in</p> <p>25 this lawsuit?</p>	<p style="text-align: right;">Page 197</p> <p>1 But I -- I don't think he's an employee</p> <p>2 of Elliot's. He's a consultant that works for another</p> <p>3 firm.</p> <p>4 COURT REPORTER: I don't think he's an</p> <p>5 employee of what?</p> <p>6 MR. BECKER: He's an employee of</p> <p>7 Mr. Gottfurcht's, but rather, a consultant that</p> <p>8 works for someone else.</p> <p>9 BY MR. STEPHENS:</p> <p>10 Q. Is he an employee of EMG, Mr. Soss?</p> <p>11 A. Oh, no.</p> <p>12 Q. Okay. Have you ever corresponded with</p> <p>13 Mr. Soss at the request of Manatt?</p> <p>14 A. Request of who?</p> <p>15 Q. Your lawyers.</p> <p>16 A. No.</p> <p>17 MR. STEPHENS: Rob, is Manatt representing</p> <p>18 Mr. Soss?</p> <p>19 THE WITNESS: No.</p> <p>20 MR. BECKER: No.</p> <p>21 BY MR. STEPHENS:</p> <p>22 Q. Okay. Is Manatt representing any of the</p> <p>23 folks at Protovu?</p> <p>24 A. No.</p> <p>25 Q. Are they representing any of the people</p>

<p style="text-align: right;">Page 202</p> <p>1 he sent was one that I had deleted. 2 Q. Okay. But he told you he sent some 3 e-mails -- 4 A. He said, "I sent you an e-mail." 5 And I said -- I said, "Oh, I didn't 6 receive an e-mail." 7 But then I went back and I looked, and 8 it was in my junk e-mail. 9 Now, I thought that his e-mail would be 10 Albert Long, so that's what I looked for, but it 11 wasn't. It was some initials. 12 And so it's possible it went in there 13 automatically or it's possible that when I delete junk 14 e-mails, that I wasn't familiar with it and I would 15 have deleted it. 16 Q. Did you or -- see an e-mail from him or 17 not in your junk e-mail? 18 A. Yeah, I did. I went back to junk e-mail 19 and it was, like, confirmed for Hous -- 20 Oh, I think he -- he may have asked, 21 "Are you talking about the Houston's in Century City 22 or the Houston's in Santa Monica?" 23 I think -- I remember getting something 24 like that. 25 Q. Okay. And then you think you may have</p>	<p style="text-align: right;">Page 204</p> <p>1 (Whereupon E. Gottfurcht Exhibit 3 was 2 marked for identification) 3 THE WITNESS: Do you want me to keep those, 4 still? 5 BY MR. STEPHENS: 6 Q. Yes, you can keep those. 7 The court reporter has handed you the 8 exhibit marked E. Gottfurcht 3, and that's 9 U.S. Patent 6,604,97. 10 Right? 11 A. That's correct. 12 Q. And you're an inventor on that patent. 13 Right? 14 A. Yes. 15 Q. And that's the parent to the two patents 16 in this lawsuit. 17 Is that right? 18 A. Yes. 19 Q. I'm reminded that we took a break 20 sometime earlier today so you guys could consult and 21 figure out whether you could tell me why you decided 22 to change law firms. 23 A. Uh-huh. 24 Q. And what did you determine? 25 A. That I could tell you.</p>
<p style="text-align: right;">Page 203</p> <p>1 deleted it? 2 A. I may or may not have deleted it. 3 Q. Okay. Have you taken any steps to 4 preserve voicemails? 5 A. No, but I seldom receive messages by 6 voicemail. 7 Q. Have you taken any steps to preserve 8 text messages? 9 A. No. 10 Q. And you did receive some from Mr. Long 11 that you deleted, right, or they -- 12 A. If there were text messages on my phone, 13 whatever he sent me on my phone, I lost because my 14 battery went dead and I had to go buy a new iPhone. 15 Q. Okay. And you didn't take any steps to 16 preserve those. 17 Right? 18 A. Oh, in between? 19 Q. Yes. 20 A. No, I did not. 21 Q. Okay. And you're not taking any steps 22 now to preserve text messages or voicemail messages. 23 Right? 24 A. That's correct. 25 MR. STEPHENS: I'd like that marked, please.</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. Okay. Go ahead and tell me, please. 2 A. Could you repeat the question? 3 Q. Yeah. 4 Why did you decide to switch from 5 Blakely Sokoloff Taylor & Zafman to 6 Morrison & Foerster when prosecuting the 845 patent? 7 A. Well, I don't believe it was for 8 prosecuting of the 845. I think that it had been 9 fully prosecuted and was in that period between the 10 appeal board sending its decision reversing the 11 examiner's decision back to the examiner. 12 So I don't think there was any 13 prosecution. 14 At that particular time, Tom Coester was 15 going on I believe a four-month sabbatical that his 16 firm offers I think every eight years. 17 And Jonathan Miller, who did the bulk of 18 the work at that time, was leaving the firm. 19 That left me without my two attorneys 20 that I had worked with, and so that is the reason why 21 I left the firm. 22 Q. Okay. Looking at the 497 patent, 23 there's a number of inventors there. 24 Can you tell me which of those inventors 25 were associated with Online Labs?</p>

<p style="text-align: right;">Page 202</p> <p>1 he sent was one that I had deleted. 2 Q. Okay. But he told you he sent some 3 e-mails -- 4 A. He said, "I sent you an e-mail." 5 And I said -- I said, "Oh, I didn't 6 receive an e-mail." 7 But then I went back and I looked, and 8 it was in my junk e-mail. 9 Now, I thought that his e-mail would be 10 Albert Long, so that's what I looked for, but it 11 wasn't. It was some initials. 12 And so it's possible it went in there 13 automatically or it's possible that when I delete junk 14 e-mails, that I wasn't familiar with it and I would 15 have deleted it. 16 Q. Did you or -- see an e-mail from him or 17 not in your junk e-mail? 18 A. Yeah, I did. I went back to junk e-mail 19 and it was, like, confirmed for Hous -- 20 Oh, I think he -- he may have asked, 21 "Are you talking about the Houston's in Century City 22 or the Houston's in Santa Monica?" 23 I think -- I remember getting something 24 like that. 25 Q. Okay. And then you think you may have</p>	<p style="text-align: right;">Page 204</p> <p>1 (Whereupon E. Gottfurcht Exhibit 3 was 2 marked for identification) 3 THE WITNESS: Do you want me to keep those, 4 still? 5 BY MR. STEPHENS: 6 Q. Yes, you can keep those. 7 The court reporter has handed you the 8 exhibit marked E. Gottfurcht 3, and that's 9 U.S. Patent 6,604,97. 10 Right? 11 A. That's correct. 12 Q. And you're an inventor on that patent. 13 Right? 14 A. Yes. 15 Q. And that's the parent to the two patents 16 in this lawsuit. 17 Is that right? 18 A. Yes. 19 Q. I'm reminded that we took a break 20 sometime earlier today so you guys could consult and 21 figure out whether you could tell me why you decided 22 to change law firms. 23 A. Uh-huh. 24 Q. And what did you determine? 25 A. That I could tell you.</p>
<p style="text-align: right;">Page 203</p> <p>1 deleted it? 2 A. I may or may not have deleted it. 3 Q. Okay. Have you taken any steps to 4 preserve voicemails? 5 A. No, but I seldom receive messages by 6 voicemail. 7 Q. Have you taken any steps to preserve 8 text messages? 9 A. No. 10 Q. And you did receive some from Mr. Long 11 that you deleted, right, or they -- 12 A. If there were text messages on my phone, 13 whatever he sent me on my phone, I lost because my 14 battery went dead and I had to go buy a new iPhone. 15 Q. Okay. And you didn't take any steps to 16 preserve those. 17 Right? 18 A. Oh, in between? 19 Q. Yes. 20 A. No, I did not. 21 Q. Okay. And you're not taking any steps 22 now to preserve text messages or voicemail messages. 23 Right? 24 A. That's correct. 25 MR. STEPHENS: I'd like that marked, please.</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. Okay. Go ahead and tell me, please. 2 A. Could you repeat the question? 3 Q. Yeah. 4 Why did you decide to switch from 5 Blakely Sokoloff Taylor & Zafman to 6 Morrison & Foerster when prosecuting the 845 patent? 7 A. Well, I don't believe it was for 8 prosecuting of the 845. I think that it had been 9 fully prosecuted and was in that period between the 10 appeal board sending its decision reversing the 11 examiner's decision back to the examiner. 12 So I don't think there was any 13 prosecution. 14 At that particular time, Tom Coester was 15 going on I believe a four-month sabbatical that his 16 firm offers I think every eight years. 17 And Jonathan Miller, who did the bulk of 18 the work at that time, was leaving the firm. 19 That left me without my two attorneys 20 that I had worked with, and so that is the reason why 21 I left the firm. 22 Q. Okay. Looking at the 497 patent, 23 there's a number of inventors there. 24 Can you tell me which of those inventors 25 were associated with Online Labs?</p>

<p style="text-align: right;">Page 206</p> <p>1 A. Yes, Manuel Beltran, Steven Woesner, 2 John Marinuzzi, Albert Long, Donald Dukeshire. 3 Q. And who is Teague McKnight? 4 A. Teague McKnight? I hired Teague I think 5 starting in July of 1999 to work on the graphics of 6 the interface and the advertising, part of those 7 graphics. 8 Q. Uh-huh. And how did you come to hire 9 Mr. McKnight? 10 A. He was a friend of a friend. 11 Q. And who was the friend he was a friend 12 of? 13 A. I don't remember his name, because he 14 was a friend of another friend. 15 Q. Okay. What was Mr. McKnight's 16 background? 17 A. He -- graphics, graphic design, the 18 Internet, computers. He had graduated college, I 19 believe, and was in that period before going to 20 business school. 21 Q. So can you just run through the 22 inventors, here, and tell me what they contributed 23 to of the invention? 24 A. Well, I'm not able to tell you 25 specifically, because there were times when we all met</p>	<p style="text-align: right;">Page 208</p> <p>1 What figure? Figure 8? 2 Q. Figure 8, yeah. 3 A. Just some slight changes. 4 Q. Not in the 845, is there? 5 A. Between the 845 and the -- 6 Q. Figure 8 in the -- Figure 8 in the 497, 7 and Figure 8 in the 845 -- oh, I see. The F and J 8 changed -- 9 A. Correct. 10 Q. -- in this. Yeah, you're right. 11 I think you mentioned that 12 Alber-Michel Long contributed Figure 8 in the 845 13 patent. 14 Did he also contribute part of Figure 8 15 in the 497? 16 A. He may have. 17 Q. Was his contributions to the 497 patent 18 primarily graphical? 19 A. He worked with the team, so they -- they 20 were a team and they worked together. And so I was 21 not privy to all their conversations and meetings. 22 They did write a report. 23 I'm able to -- I'm unable to distinguish 24 what part of that report was contributed to each 25 co-inventor.</p>
<p style="text-align: right;">Page 207</p> <p>1 together and everybody threw out a contribution. 2 But the report was prepared by 3 Manuel Beltran. He was the leader of the group. And 4 Steven -- Steven Woesner, John Marinuzzi, and 5 Albert Long and Donald Dukeshire, they worked on the 6 report. 7 Q. Did they provide contributions to the 8 invention other than the things that are described in 9 the report? 10 A. Not that I recall. 11 Q. Could you just leaf through the figures 12 of the 497 patent and tell me what, if anything, you 13 can identify as a contribution of Mr. McKnight? 14 A. He may have worked on Figure 4-A; he 15 may have worked on Figure 5; 4-B is questionable; 16 Figure 8; Figure 9-A, is my recollection; Figure 9-B; 17 Figure 9-C; Figure 9-D; Figure 10-A; 10-B; 10-C; 10-D; 18 10-E; 10-F; 10-G; 11; 12-A; 12-B; 13. 19 That's the best of my recollection. 20 Q. Now, Figure 8 is the same as Figure 8 in 21 the later patents. 22 Right? 23 A. Figure what? 24 Q. Figure 8? 25 A. 8?</p>	<p style="text-align: right;">Page 209</p> <p>1 Q. Okay. So you don't really know exactly 2 who contributed what to the 497 invention. 3 Right? 4 A. That would be generally correct. 5 Q. Okay. Is there anything that you can 6 specifically identify with any of the individual 7 inventors? 8 A. Well, I remember going to a meeting. We 9 had a -- I think the co-inventors had day jobs, and 10 they worked at night and the weekends. And I recall a 11 couple times I reserved a room at a hotel in 12 Orange County. 13 I thought during that meeting -- I could 14 be wrong, here -- that Manuel Beltran, being the 15 leader of the team, said to Albert, Did you complete 16 the history portion of Figure 11? 17 That's my recollection. 18 Q. Okay. Is there any other individual 19 contribution of any inventor that you can recall? 20 A. No, I -- individually, no. It was the 21 report that they all worked on collectively. 22 MR. STEPHENS: Mark that, please. 23 (Whereupon E. Gottfurcht Exhibit 4 was 24 marked for identification) 25 MR. STEPHENS: This is Number 4.</p>

<p style="text-align: right;">Page 230</p> <p>1 A. I believe so.</p> <p>2 Q. Okay. Does the document that you see on</p> <p>3 Page 1412 reflect notes of a conversation you had with</p> <p>4 Mr. Coester?</p> <p>5 A. I don't believe so.</p> <p>6 Q. Why do you say that?</p> <p>7 A. I don't recall taking notes of a</p> <p>8 conversation I've had with Tom Coester.</p> <p>9 Q. Ever?</p> <p>10 A. No, not -- not in this document, and --</p> <p>11 and -- so I don't recall that that would have been</p> <p>12 notes from conversations with Tom Coester.</p> <p>13 Q. Okay. But it's ten years ago.</p> <p>14 It could have happened.</p> <p>15 Right?</p> <p>16 You just don't remember?</p> <p>17 A. I don't think so.</p> <p>18 MR. BECKER: I'll object to form.</p> <p>19 BY MR. STEPHENS:</p> <p>20 Q. How are you so sure?</p> <p>21 A. Because I don't recall it.</p> <p>22 Q. Okay. But there's a lot of things you</p> <p>23 don't recall.</p> <p>24 A. I understand.</p> <p>25 Q. There's a lot of things you don't recall</p>	<p style="text-align: right;">Page 232</p> <p>1 Q. And who was Tom?</p> <p>2 A. I don't recall.</p> <p>3 Q. Is that Tom Coester?</p> <p>4 A. I don't recall.</p> <p>5 Q. And if you'll turn to Page 1428, the top</p> <p>6 of that page says, "Business Plan"?</p> <p>7 A. Yes.</p> <p>8 Q. Did you develop a business plan around</p> <p>9 your invention?</p> <p>10 A. I don't recall.</p> <p>11 Q. How much money have you spent trying to</p> <p>12 exploit your invention?</p> <p>13 MR. BECKER: Object to form.</p> <p>14 THE WITNESS: From 1999?</p> <p>15 BY MR. STEPHENS:</p> <p>16 Q. Yes.</p> <p>17 A. A guess?</p> <p>18 Q. Your best guess, sure.</p> <p>19 A. About \$2 million or more.</p> <p>20 Q. And how much of that is -- was spent on</p> <p>21 patent filings and prosecuting?</p> <p>22 A. Well, that would be included as part of</p> <p>23 that.</p> <p>24 Q. Well, no, I'm asking you to break it</p> <p>25 down.</p>
<p style="text-align: right;">Page 231</p> <p>1 from ten years ago.</p> <p>2 Right?</p> <p>3 A. That's correct.</p> <p>4 Q. But you do recall that this is not notes</p> <p>5 from a conversation with Tom Coester.</p> <p>6 Right?</p> <p>7 A. I do not -- I do not recall. I do not</p> <p>8 believe that it is.</p> <p>9 Q. But you don't know why you read his name</p> <p>10 on the page, either.</p> <p>11 Right?</p> <p>12 A. That's correct.</p> <p>13 Q. Okay. If you turn to Page 1424, it</p> <p>14 says, "Fogies.com, enjoying a longer life."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. And then to the left of that, there's</p> <p>18 some words that are written down, "Jill and Tom," and</p> <p>19 then there's letter -- words to the left of that.</p> <p>20 Can you read those?</p> <p>21 A. Looks like "trademark" next to Jill, and</p> <p>22 Tom -- portal? I can't -- I don't know what that</p> <p>23 says.</p> <p>24 Q. And who was Jill?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">Page 233</p> <p>1 A. I don't know how -- I couldn't break</p> <p>2 that down.</p> <p>3 Q. You spent more than a million on</p> <p>4 patents?</p> <p>5 A. No, I think I -- I -- I think that it</p> <p>6 was about \$2 million for patent prosecution,</p> <p>7 prototypes, and any other related expenses.</p> <p>8 Q. Has that all been your own money?</p> <p>9 A. Yes.</p> <p>10 Q. No investors?</p> <p>11 A. No.</p> <p>12 Q. Do you have records of what you've</p> <p>13 spent?</p> <p>14 A. I don't recall.</p> <p>15 Q. You don't have anybody in charge of</p> <p>16 keeping records?</p> <p>17 A. Well, I'd have to go see if I could find</p> <p>18 records pertaining to that.</p> <p>19 That go back ten years?</p> <p>20 Q. Any period of time.</p> <p>21 A. Yeah, I'd have to check to see if I have</p> <p>22 those records.</p> <p>23 Q. You didn't check to see if you have</p> <p>24 those records in connection with this lawsuit already?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 294</p> <p>1 documents. But to my memory, at Time Warner, AT&T, 2 Fox, Yahoo, Comcast, I think Microsoft, Cisco. Those 3 are some of the companies I believe that I talked to. 4 Q. And which of those companies did you 5 have meetings with? 6 A. Time Warner, Fox, NBC, AT&T. 7 That's all I can think of then. 8 Q. So you didn't meet with Yahoo? 9 A. I -- I spoke to them on the phone. 10 Q. You didn't meet with Comcast? 11 A. I spoke to them on the phone. 12 Q. You didn't meet with Microsoft? 13 A. I spoke to them on the phone. 14 Q. And you didn't meet with Cisco? 15 A. I talked to them on the phone. 16 Q. Okay. Does EMG have any employees? 17 A. No. 18 Q. Where is its office? 19 A. The office is at my residence, and we 20 have an office in Tyler, Texas. 21 Q. And is the office in Tyler, Texas, the 22 office operated by your lawyer, local counsel? 23 MR. BECKER: Object. Form. 24 THE WITNESS: It's an office where we have our 25 original documents stored.</p>	<p style="text-align: right;">Page 296</p> <p>1 A. I can't recall who I talked to. 2 I said, "We're sending documents to you. 3 We'd like you to arrange for a space and we'll pay 4 rent to store the documents -- the original 5 documents." 6 Q. You paid your rent to 7 Parker Bunt & Ainsworth? 8 A. No. No, no, no. 9 Q. Who do you pay your rent to? 10 A. I don't know who it is, but it's the 11 landlord of the building. 12 Q. Okay. But Mr. Ainsworth arranged for 13 the -- 14 A. I'm not sure whether he did. I -- I'm 15 not testifying to that. 16 Q. Okay. But he's the one you talked to, 17 to make that happen -- 18 A. I can't -- I'm not -- somebody -- 19 Q. -- that you talked to, to get the space? 20 A. I don't recall. 21 Q. Do you write a check every month for 22 that rent? 23 A. Does EMG write a check? 24 Q. Yes. 25 A. Yes.</p>
<p style="text-align: right;">Page 295</p> <p>1 BY MR. STEPHENS: 2 Q. Anything else happen there? 3 A. I think we have a computer, telephone 4 service, I think maybe a safe for the documents. 5 Q. Is that -- was that office arranged for 6 by your lawyer in Tyler? 7 MR. BECKER: And I'll instruct you not to 8 answer, only to the extent that you have to divulge 9 attorney-client advice -- 10 MR. STEPHENS: Right. 11 MR. BECKER: -- or communication. 12 MR. STEPHENS: It's got to be legal advice. 13 Renting a space for him does not qualify as legal 14 advice. 15 MR. BECKER: I didn't tell him that. 16 BY MR. STEPHENS: 17 Q. Okay. Did the lawyer arrange for your 18 space in Tyler? 19 A. Did he arrange for the space in Tyler? 20 I think I did. 21 Q. And who did you call? 22 A. I called Charlie Ainsworth's office, our 23 local counsel. 24 Q. And you talked to Charlie and said, I 25 want some space?</p>	<p style="text-align: right;">Page 297</p> <p>1 Q. And who does that check -- who is that 2 paid to? 3 A. I don't recall the name. 4 Q. Okay. It doesn't show up on your legal 5 bill? 6 A. No, no, not at all. 7 Q. Is there any activity that occurs there 8 other than storing documents? 9 A. As far as activity that I know of? 10 Q. Yeah. 11 A. No. 12 Q. Have you ever been there? 13 A. No. 14 Q. Do you know anyone who has ever been in 15 that space? 16 A. Well, I would think that there's 17 somebody from the local counsel's office that had been 18 there to arrange our original documents. 19 Q. But do you know of anyone who's ever 20 been there, specific person? 21 A. No. 22 Q. Okay. Now, tell me about your 23 education, please. 24 A. I graduated from University of 25 Southern California, I think in 1962.</p>

<p style="text-align: right;">Page 346</p> <p>1 MR. LANE: Let me just add -- I just want to 2 add one thing on the record for American, since we 3 haven't -- I think that we have been prejudiced by the 4 deposition, given the number of questions the witness 5 hasn't been able to answer. 6 It's caused the deposition to take an 7 inordinate amount of time, the amount of time it took 8 to review documents, as well as now, we found out a 9 lot of documents haven't been produced. 10 So just for American Airlines, we will 11 need to seek additional time to depose Mr. Gottfurcht. 12 Thank you. 13 MR. BECKER: And we disagree with that 14 characterization. 15 MR. STEPHENS: Okay. 16 THE WITNESS: Thank you very much. 17 THE VIDEOGRAPHER: This concludes Volume I in 18 the deposition of Elliot Gottfurcht. 19 The number of tapes used was four. The 20 original videotapes will be retained by Merrill Legal 21 Solutions, Woodland Hills, California. 22 Going off the record. 23 The time is 7:51 p.m. 24 COURT REPORTER: Okay. And you both wanted 25 roughs?</p>	<p style="text-align: right;">Page 348</p> <p>1 PENALTY OF PERJURY 2 3 4 5 I hereby declare I am the deponent in the 6 within matter; that I have read the foregoing 7 proceeding and know the contents thereof and I declare 8 that the same is true of my knowledge except as to the 9 matters which are therein stated upon my information 10 or belief, and as to those matters I believe it to be 11 true. 12 I declare under penalty of perjury that the 13 foregoing is true and correct. 14 Executed on the _____ day of 15 _____, 2009, at _____, 16 California. 17 18 19 20 21 _____ 22 ELLIOT GOTTFURCHT 23 24 25</p>
<p style="text-align: right;">Page 347</p> <p>1 MR. STEPHENS: Yes. 2 MR. BECKER: Yes. 3 MR. GENET: And I'll just take a copy. 4 COURT REPORTER: Okay. Did you need the 5 roughs tonight, or is it okay for the morning? 6 MR. STEPHENS: Tomorrow is fine. 7 MR. BECKER: That's fine. 8 (Whereupon the deposition was concluded 9 at 7:52 p.m.) 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 349</p> <p>1 STATE OF CALIFORNIA) 2) 3) ss. 4 COUNTY OF LOS ANGELES) 5 6 I, SUSAN LYNN POBOR, Certified Shorthand 7 Reporter No. 5132 for the State of California, do 8 hereby certify: 9 That prior to being examined, the witness 10 named in the foregoing deposition, was duly sworn to 11 testify the truth, the whole truth, and nothing but 12 the truth; 13 That said deposition was taken down by me in 14 shorthand at the time and place therein named and 15 thereafter reduced by me to typewritten form and that 16 the same is a true, correct, and complete transcript 17 of said proceedings. 18 Before completion of the deposition, review of 19 the transcript [X] was [] was not requested. If 20 requested, any changes made by the deponent (and 21 provided to the reporter) during the period allowed 22 are appended hereto. 23 I further certify that I am not interested in 24 the outcome of the action. 25 Witness my hand this _____ day of _____, 2009. _____ Susan Lynn Pobor, CSR No. 5132</p>